IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 237 of 2004
IN
COMPANY PETITION No. 205 of 1996
WITH
COMPANY APPLICATION No. 16 of 2000
COMPANY APPLICATION No. 26 of 2000
COMPANY APPLICATION No. 43 of 2000
COMPANY APPLICATION No. 44 of 2000
COMPANY APPLICATION No.186 of 2000
COMPANY APPLICATION No.257 of 2000
COMPANY APPLICATION No. 52 of 2002
COMPANY APPLICATION No. 19 of 2003
COMPANY APPLICATION No.268 of 2004
WITH
OFFICIAL LIQUIDATOR REPORT No. 03 of 2000
OFFICIAL LIQUIDATOR REPORT No. 23 of 2004
OFFICIAL LIQUIDATOR REPORT No. 72 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5	Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Applicant
Versus
O.L.OF G.S.T.C. LTD. & 3 - Respondents

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Appearance :

Company Application No. 237 of 2004
MR SN SHELAT, ADVOCATE GENERAL with MS MAITHILI D MEHTA, Assistant Government Pleader for Applicant.
MR ASHOK L. SHAH FOR OFFICIAL LIQUIDATOR.
MR JR NANAVATY for Bhavnagar Municipal Corporation.
MR PRANAV G DESAI for Respondent No. 3.
MR ANSHIN H. DESAI for Respondent No. 4.

Company Application No. 43 of 2000

MR AS VAKIL for Applicant.
MR ASHOK L. SHAH for Official Liquidator.
MR SN SHELAT, ADVOCATE GENERAL with MS MAITHILI D MEHTA, Assistant Government Pleader for State of Gujarat - respondent No. 2.

Company Application No. 268 of 2004

MR BT RAO for Applicant.
MS PJ DAVAWALA for respondent No. 1.

Company Application No. 19 of 2003

MR ANSHIN H DESAI for Applicant.
MR ASHOK L SHAH for Official Liquidator.

Company Application No. 186 of 2000

MR JR NANAVATI for Bhavnagar Municipal Corporation - Applicant.

MR ASHOK L SHAH for Official Liquidator.
MR SN SOPARKAR, SENIOR ADVOCATE for respondent No. 2.
MR SN SHELAT, ADVOCATE GENERAL with MS MAITHILI D MEHTA, Assistant Government Pleader for State of Gujarat - respondent No. 3.

Company Application No. 16 of 2000

MR HARIN P RAVAL for Applicant.
MR ASHOK L SHAH for Official Liquidator.
MR SN SHELAT, ADVOCATE GENERAL with MS MAITHILI D MEHTA, Assistant Government Pleader for State of Gujarat - respondent No. 2.

Company Application No. 44 of 2000

MR JR NANAVATI for Applicant.
MR ASHOK L SHAH for Official Liquidator.

Company Application No. 52 of 2002

MR SN SHELAT, ADVOCATE GENERAL with MS MAITHILI D MEHTA, Assistant Government Pleader for Applicant.
MR JR NANAVATI for respondent No. 1.
MR ASHOK L SHAH for Official Liquidator.
MRS SWATI SOPARKAR for respondent No. 3.

Company Application NO. 257 of 2000

MR YN RAVANI for Applicant.
MR ASHOK L SHAH for Official Liquidator.
MR JR NANAVATI for Bhavnagar Municipal Corporation.

Company Application No. 26 of 2000

THAKKAR ASSOCIATES for Applicant.
MR SN SHELAT, ADVOCATE GENERAL with MS MAITHILI D MEHTA, Assistant Government Pleader for State of Gujarat.

MR ASHOK L SHAH for Official Liquidator.

O.L.R. NO. 03 of 2000

MR ASHOK L SHAH for Official Liquidator.

O.L.R. NO. 23 of 2004

MR ASHOK L SHAH for Official Liquidator.
MR SN SHELAT, ADVOCATE GENERAL with MS MAITHILI D MEHTA, Assistant Government Pleader for State of Gujarat.
MR BR RAO for respondent No. 4.

O.L.R. No. 72 of 2005

MR ASHOK L SHAH for Official Liquidator.
MR SN SHELAT, ADVOCATE GENERAL with MS MAITHILI D MEHTA, Assistant Government Pleader for State of Gujarat.
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 23/12/2005

COMMON ORAL JUDGMENT

1.Since all these Company Applications and O.L. Reports are inter related and they center round the properties of M/s. New Jahangir Vakil Mills (in liquidation), they are heard and being disposed of by this common judgment and order.

2.Before the Court proceeds to deal with each of

these applications and reports, it is necessary to have a close look at the factual background of the entire issue raised before the Court for its consideration.

3.The brief resume of the facts as stated before the Court is that New Jahangir Vakil Mills (for short NJVM) (in liquidation) is one of the units of Gujarat State Textile Corporation Limited (for short GSTC) (in liquidation) since 06.02.1997. GSTC was incorporated on 30.11.1968 and it was fully owned Company by the State Government and it was incorporated mainly with an object of carrying on its business of Textile Mills and managing any such business or undertaking of any person or Company entrusted to it, either by the Central Government or by the State Government. The other object of the Company was to acquire and undertake the whole or any part of the business, property, assets and liabilities of any person, firm or company

carrying on textile business. The Company was also formed with a view to take and run as an unemployment relief or otherwise any textile mill in Gujarat State, which was closed or likely to be closed, or has gone into liquidation or otherwise. NJVM became a part of a Unit of GSTC by virtue of the provisions of the Gujarat State Textile Undertakings (Nationalization) Act, 1986. The said Act provided for nationalization of total four Textile undertakings of which one was NJVM. Although the ordinance was promolgated on 01.07.1986, it provided for nationalization of the textile undertakings with retrospective effect from 01.01.1986. Even prior to such nationalization of the NJVM, GSTC was connected with NJVM as a lessee. NJVM got closed in the year 1980. GSTC took over the affairs of NJVM on lease from the Official Liquidator in September, 1982 on a lease rental of Rs. 1 Lac per month. Day to day affairs of the Mill were

conducted and managed by GSTC till 31.12.1985. On 01.01.1986, NJVM was merged into GSTC as its unit by virtue of the retrospective effect of the Provisions of Nationalization Ordinance. After 01.01.1986 i.e. after nationalization of the unit, all business affairs were managed by the GSTC as its constituent unit. This arrangement continued till 06.02.1997 i.e. the date on which the winding up order of GSTC was passed by this Court.

4.At the relevant time, there were 17 textile mills of GSTC as per the Annual Report and Accounts for the year 1994-95. On account of stringent crises in the textile industry in the whole of the State of Gujarat and other relevant reasons, GSTC could not do well and therefore, GSTC approached the Board for Industrial and Financial Reconstruction (for short BIFR) for revival and reconstruction of the Company. After hearing all the parties

concerned, BIFR found that it is not possible to meet the losses suffered by GSTC within a reasonable time and there is no likelihood of GSTC being revived in future and, therefore, an opinion was formed by BIFR under Section 20 of the Sick Industrial Companies (Special Provisions) Act, 1985 for winding up of GSTC. This opinion was registered as Company Petition No. 205 of 1996 and after issuance of notices to the relevant parties including the Banks, Labour Unions and other financial institutions whose interest was going to be affected in the said proceedings, this Court vide its order dated 06.02.1997 has passed an order to wind up GSTC and the Official Liquidator attached to this Court was appointed as the Liquidator of the Company and he was directed to take over the charge of all the assets and properties of GSTC including possession thereof and the Gujarat Industrial Development Corporation was appointed as an agent of Official Liquidator

under Section 457(2)(v) of the Companies Act, 1956 for the purpose of preservation, protection and disposal of the property of the Company in liquidation.

5.Upon winding up order having been passed, statement of affairs was filed by the Director of GSTC before the Official Liquidator and the symbolic possession of all the textile mills units and head office have been taken over by the Official Liquidator at the relevant time.

6.Company Application No. 16 of 2000 is filed by the applicant, namely, 21st Century Developers praying for confirmation of sale in favour of the applicant of the entire assets comprised in Lot No. 3 of M/s. New Jahangir Vakil Mills (in liquidation), a Unit of M/s. Gujarat State Textile Corporation Limited (in liquidation) as per the auction proceedings held on 17.01.2000 subject to such terms and conditions as may be

deemed fit and proper and imposed by this Court. The applicant has also prayed for the permission to post security guards at its own expenses within the premises of M/s. New Jahangir Vakil Mills (in liquidation), subject to such terms and conditions as may be deemed just and proper and imposed by the Court.

7.Company Application No. 26 of 2000 is filed by one Mr. Rajabbhai K. Kangadh praying for the acceptance of the applicant's offer for purchase of all assets including land, building, plant, machinery, furniture, fixture, stores and other movable assets etc. comprising lot No. (iii) of New Jahangir Vakil Mills (in liquidation), a Unit of Gujarat State Textile Corporation Ltd., at the total price of Rs. 11 Crores, on such terms and conditions as this Court deems just and proper.

8.Company Application No. 43 of 2000 is filed by

State Bank of Saurashtra praying for the direction to the Official Liquidator to the effect that the amounts realised from the sale of the assets of the New Jahangir Vakil Mills (a Unit of Gujarat State Textile Corporation Limited) (in liquidation) and more particularly pursuant to the two advertisements dated 23.12.1999 and 06.02.2000 issued in the Newspaper “Saurashtra Samachar”, published from Bhavnagar, may not be disbursed except after first making the payments due to the applicant, with respect to loans, inclusive of interest advanced by the applicant to the New Jahangir Vakil Mills.

9.Official Liquidator Report No. 3 of 2000 is filed by the Official Liquidator on 02.02.2000 giving particulars about the offers received and auction proceedings to be held and sought for certain further directions of this Court in the matter.

10.Company Application No. 44 of 2000 is filed by Bhavnagar Municipal Corporation seeking declaration from this Court that the Official Liquidator has no power or authority to sell by public auction or otherwise the land belonging to the applicant – Corporation situated in City Survey No. (1) 7, Sheet No. 166, Survey No. 5586 admeasuring approximately 67000 Sq. Mts. over which there is a building and the factory premises of New Jahangir Vakil Mills, Bhavnagar. The applicant has also prayed for an injunction restraining the Official Liquidator from holding public auction on 16.02.2000 in pursuance of the advertisement dated 06.02.2000.

11.Company Application No. 186 of 2000 is filed by Bhavnagar Municipal Corporation praying for the similar declaration that the Official Liquidator has no power or authority to sell by

public auction or otherwise the land belonging to the applicant – Corporation situated in City Survey No. (1) 7, Sheet No. 166, Survey No. 5586 admeasuring approximately 67000 Sq. Mts. given on lease by former Ruler of Bhavnagar by virtue of lease-deed dated 10th October, 1916 and approximately 7762.6 Sq. Ft. given on lease by the former Borough Municipality by Resolution No. 248, dated 12th January, 1931 over which there is a building and the factory premises of New Jahangir Vakil Mills, Bhavnagar (in liquidation). The applicant has also prayed for quashing and setting aside the auction held on 16.02.2000 by the order of this Court in O.L.R. No. 3 of 2000. The applicant has further prayed for handing over the possession of the said properties to the applicant on winding up of the Company.

12.Company Application No. 257 of 2000 is filed by the applicant, namely, Satishbhai Chavda

praying for quashing and setting aside the action of the Official Liquidator of initiating auction of the land occupied by the New Jahangir Vakil Mills, Bhavnagar (in liquidation).

13.Company Application No. 52 of 2002 is filed by the State of Gujarat seeking impleadment of State of Gujarat, through Collector, Bhavnagar as party to the proceedings of Company Application No. 186 of 2000 and seeking an audience in the said matter. The applicant – State of Gujarat has also prayed for the declaration that the Official Liquidator has no power or authority to sell by public auction or otherwise the land belonging to the applicant situated in City Survey No. (1) 7, Sheet No. 166, Survey No. 5586 admeasuring approximately 67000 Sq. Mts. given on lease by former Ruler of Bhavnagar by virtue of lease-deed dated 10th October, 1916 and approximately 7762.6 Sq. Ft.

given on lease by the former Borough Municipality by Resolution No. 248, dated 12th January, 1931 over which there is a building of the Mills and the factory premises of New Jahangir Vakil Mills, Bhavnagar (in liquidation). The applicant has also prayed for quashing and setting aside the auction held on 16.02.2000 by the order of this Court in O.L.R. No. 3 of 2000. The applicant has further prayed for handing over the possession of the said properties on winding up of the Company and further sought for the injunction against the Official Liquidator from confirming the sale or handing over the possession to one M/s. Vicky Trading.

14.Company Application No. 19 of 2003 is filed by M/s. Vicky Trading seeking prohibition against the Official Liquidator from conducting the auction of sale of the plant and machinery, furniture and fixtures, stores, spares, scrap

and other miscellaneous things of New Jahangir Vakil Mills being held on 24.01.2003 and seeking confirmation of sale of the entire property of the Company in liquidation in favour of the applicant.

15.Official Liquidator Report No. 23 of 2004 is filed praying for the direction from this Court to refer the matter to the appropriate Agency to investigate the cause of fire. The Official Liquidator has also prayed for the appointment of Govt. Approved Valuer to assess the damages to the properties of New Jahangir Vakil Mills.

16.Company Application No. 237 of 2004 is filed by the State of Gujarat through the Secretary, Industries & Mines Department seeking direction to the Official Liquidator to transfer and hand over all immovable assets and properties belonging to and owned by GSTC in respect of its unit, viz. New Jahangir Vakil Mills,

Bhavnagar to the applicant - State free from all encumbrances, liabilities and charges under Section 457 (i)(e) of the Companies Act, 1956. The applicant – State has further prayed for the directions to the Official Liquidator to make payment to the Secured and/or Unsecured Creditors from the funds already available with the Official Liquidator. The applicant – State has alternatively prayed for the direction to the Official Liquidator to give set off against the amount already paid by the Govt. which the Official Liquidator owes to the government to the tune of Rs. 889.86 Crores for discharging the liabilities towards all the dues of the Gujarat State Textile Corporation (now in liquidation). The applicant – State has also prayed for the stay against the Official Liquidator from taking any further action pursuant to the order passed by this Court on 06.02.1997 in Company Petition No. 205 of 1996 in respect of disposal of properties and/or to

deal with the assets and properties in any manner whatsoever.

17.Company Application No. 268 of 2004 is filed by Mill Kamdar Union seeking direction to the Official Liquidator to release the unpaid wages of the members of the applicant – Union, who are the workers of M/s. New Jahangir Vakil Mills (in liquidation) for the period commencing from 01.10.1994 to 30.09.1996 as directed by the Industrial Tribunal, Bhavnagar in Review Application Ref. (IT) No. 19 of 1995 dated 27.09.1996, for which the claim has been filed by the Union before the Official Liquidator on 12.01.2000 along with the order passed by the Tribunal. The applicant – Union has also prayed for the direction to the Official Liquidator to pay the amount of Provident Fund to the members of the applicant – Union who are the workers of the Company in liquidation, as claimed by the workmen on

12.01.2000 and thereafter.

18.Official Liquidator Report No. 72 of 2005 is filed by the Official Liquidator seeking direction from this Court to link up O.L.R. No. 23 of 2004 with Company Application No. 19 of 2003 and after hearing all concerned, the said application may be decided. The Official Liquidator has also sought for the direction to the State Government to give proof as regards to their statement that they are the major creditor of the Company and has paid Rs. 826.79 Crores to the then GSTC Ltd. whereas as per the balance sheet as at 06.02.1997 and as per Note No. 7 of Schedule 21, the amount is Rs. 219.82 Crores. The Official Liquidator has, therefore, sought the direction to the State Government to file their claim with documentary evidence as per the Provisions of Companies Act, 1956 with the Official Liquidator and has also sought for the permission of this Court to

give public advertisement in the Newspapers for inviting the claims from the Creditors.

19.The Court has passed several orders from time to time in different applications. During the course of hearing of all these matters, there was unanimity amongst the learned advocates appearing for the respective parties that if Company Application No. 237 of 2004 is taken up for hearing, the view taken therein will take care of all other matters. Accordingly, all submissions are made, arguments are canvassed and documents were referred to keeping in mind the reliefs sought for in the said applications.

20.As stated above, Company Application No. 237 of 2004 is moved by the State Government through the Secretary, Industries & Mines Department and the State Government has asked for the possession of the immovable properties

of the Mills Company (in liquidation).

21.So far as the unit of New Jahangir Vakil Mills is concerned, there are no Secured Creditors and liabilities towards all the Secured Creditors as well as the labourers have already been fully discharged by the State Government through GSTC. The State Government has provided fund of Rs. 50,53,86,050/- to GSTC for being paid to the staff including workers towards their salary.

22.So far as the unit of New Jahangir Vakil Mills is concerned, there are no Secured Creditors against the said unit as per the statement of affairs submitted to the Official Liquidator and the liabilities of the labourers have been fully discharged as per the record available. So far as the immovable properties of New Jahangir Vakil Mills is concerned, the

superstructure is existing and the plants and machineries were sold to one M/s. Vicky Traders. Over and above the existing superstructure, there is huge portion of land admeasuring 65,890.23 Sq. Mts. The valuation was carried out by the Collector, Bhavnagar through its valuation machinery and it has come to Rs. 42,13,44,000/-. The major amount of liabilities of GSTC is only of the Government and the Government is the major creditor which has been paid approximately an amount of Rs.826.79 Lacs until the order of winding up was passed on 06.02.1997. The State Government has moved an application earlier being Company Application No. 348 of 1997 for taking over the assets of all the 17 Units which were nationalized and vested with the GSTC. However, since the matter could not be settled at the relevant time due to non-co-operative attitude of the Secured Creditors, namely, Banks and other financial institutions, the

entire idea was dropped by the Government and, therefore, the said application came to be withdrawn on 22.07.1998.

23.The State Government has thereafter moved the present application only for the purpose of taking over the immovable assets being land and building only of the New Jahangir Vakil Mills (in liquidation) where there are no secured creditors and all the liabilities including that of the labourers etc. have been fully discharged by the Government. The State Government has taken a decision to set up Gems and Jewellery park at Bhavnagar. The object of the same is to give focused thirst to setting up of diamond polishing units of international standards at potential growth centers and to give fillip to domestic production and meet competition from imports and to promote exports in this sector so as to achieve the target of foreign exchange equilibrium, which will

ultimately boost the national economy. The State Government has also taken a decision in principle to extend necessary financial assistance. The Joint Industries Commissioner has submitted a proposal dated 22.08.2003 for the same. The project report for establishing Diamond park at Bhavnagar is already prepared and the applicant is interested in establishing of Diamond park on the land of New Jahangir Vakil Mills at Bhavnagar in the larger public interest. In the initial stage, the applicant wants to establish the said project on exploratory basis in the vacant land of the said unit of GSTC. On fulfillment of this project and on establishment of the diamond park, there will be a boost to the state economy as well as national economy and at the same time will generate employment at a very large scale which would substantially solve the problem of unemployment in the district of Bhavnagar.

24.The Official Liquidator is already having sufficient fund of approximately Rs. 44.89 Crores in the account of GSTC which would be sufficient to discharge liabilities of the Secured Creditors as well as other unsecured creditors, if any, and if there is any deficit in repayment of dues of the aforesaid creditors, the State Government undertakes to discharge their liabilities after ascertaining the true and correct outstanding dues. So far as the liabilities towards workers and employees of the Company are concerned, the same have been fully discharged and if there is any liability either towards secured creditors or towards workers and if there is any case of any isolated dispute which may be pending before the Court and if any liability arises upon GSTC, the State Government takes this responsibility to discharge an obligation as and when it arises in future.

25.Since the Official Liquidator has filed O.L.R. No. 72 of 2005 and asked for strict proof, affidavit was filed on behalf of the State Government on 11.07.2005. It was stated therein that the State Government has sought for analysis of the statement of affairs submitted by GSTC dated 06.05.1997. Shri Suketu Trivedi, a Chartered Accountant, has submitted report regarding liability of the Mill. The Chartered Accountant has discussed the liabilities of the Mills Company at three stages (1) Pre-taking over period (prior to acquiring lease rights from OL) (2) Post-take over period (subsequent to acquiring lease rights from OL) (3) Post Nationalization period (period subsequent to Nationalization). During all these three periods, liabilities were created by the New Jahangir Vakil Mills while in operation. However, the liability created by the New Jahangir Vakil Mills during the first period

i.e. Pre-Take over period which was prior to its having any sort of association with the GSTC may be considered as the liability of New Jahangir Vakil Mills only and GSTC need not be considered to be liable for such liabilities. However, the subsequent two stages of the life tenure of New Jahangir Vakil Mills namely, Post-Take over period i.e. subsequent to acquiring lease rights from the Official Liquidator and the Post Nationalization period i.e period subsequent to Nationalization, may be considered as a period whereby the liabilities created by the New Jahangir Vakil Mills during its operation were as a result of and under the management of GSTC. Hence, the liabilities created by New Jahangir Vakil Mills during such periods may be considered to be a liability of GSTC as a whole. The Chartered Accountant has given figurative breakup of liabilities. So far as Post-take over period liability is concerned, it is Rs. 1,81,34,693/-

as per the statement of affairs and is to be discharged out of the compensation fixed for the undertaking. However, out of the above, the State Government has discharged the dues of State Bank of Saurashtra on 31.03.2005 aggregating to Rs. 531.80 Lacs, in full and final settlement, including their dues of Pre-take over management period. The State Government is holding absolute and unconditional undertaking of the State Bank of Saurashtra in respect of satisfaction of their dues. Out of the remaining dues, Rs. 1,93,000/- is due to GIIC, which is an institution wholly owned by State Government. The liability towards deferred dues of taxes aggregating to Rs. 17,94,684/- is due to State Government / various departments of State Government. Thus, out of the total liability for Post-take over management period, Rs. 11,54,820/- is due to other creditors.

26.So far as the Post Nationalization period liabilities is concerned, the total liability is Rs. 2,72,04,972/- as per the statement of affairs and is to be discharged out of the assets of the undertaking. However, the State Government has initiated steps to discharge the dues of Cotton Corporation of India aggregating to Rs. 146.18 Lacs for the undertaking. The State Government is intending to settle the dues of CCI separately in line with the settlement of dues of Banks and Financial Institutions, in the manner in which dues of SBS have been settled for New Jahangir Vakil Mills. Out of the remaining dues, Rs. 8,54,442/- are due to GIIC, which is an institution fully owned by the State Government. The liability towards deferred dues of taxes aggregating to Rs. 1,08,19,033/- is due to State Government / various departments of State Government. Thus, out of the total liability for Post Nationalization

management period, Rs. 9,13,283/- is due to other creditors which is to be liquidated out of the assets of the undertaking. The State Government has also paid through GSTC an amount to the tune of Rs. 11.66 Crores to pay the terminal benefits of all the employees of the undertaking immediately before winding up of the Company.

27.Thus the total liabilities of both the periods aggregating to Rs. 453.40 Lacs, the liability of Bank to the tune of Rs. 149.93 Lacs is already discharged by the State Government. Out of the remaining unpaid dues of Rs. 303.47 Lacs, Rs. 126.14 Lacs are due to State Government towards rates and taxes and Rs. 10.48 Lacs are due to a wholly owned State Government Undertaking. The amount of unclaimed workers dues to the tune of Rs. 3.22 Lacs will have to be deposited to Labour Welfare Fund with the Social Welfare Department

of State Government. The dues of CCI to the tune of Rs. 146.18 Lacs are being separately dealt with by State Government and hence, can be excluded from the total amount payable. Thus, ultimately the outsiders liability payable stands at Rs. 17.45 Lacs only.

28.It is further stated in the affidavit that the bank balance of Rs. 80 lacs was handed over to the Official Liquidator at the time of handing over the property of the New Jahangir Vakil Mills pursuant to the winding up order dated 06.02.1997. Thereafter, the Official Liquidator has realized Rs. 460 Lacs by way of sale of the property of the assets of the Mills company. The Official Liquidator is, therefore, having fund of about Rs. 540.53 Lacs which is in excess of the liability which aggregate to 303.47 Lacs as explained in the report of the Chartered Accountant, which is inclusive of the dues of the State Government to the tune of Rs.

136.62 Lacs.

29.It is further stated in the affidavit that there is no need for the Official Liquidator to initiate any proceedings for liquidating further assets of the Mills company. The sale effected at a low price of Rs. 12 Crores is not required to be sanctioned and proceedings for sale are required to be dropped. The State Government being the sole shareholder and major creditor of the Mills Company is justified in asking for the balance assets remaining to be sold and the balance of the amount in excess of the remaining liability of the Mills held by the Official Liquidator on behalf of the State Government. It is, therefore, submitted that it is just and proper to hand over the remaining property of the undertaking together with on hand balance with the Official Liquidator to the State Government as absolute owner of the undertaking.

30.Mr. S.N. Shelat, learned Advocate General appearing on behalf of the State Government placed all the above facts before the Court. Mr. J.R. Nanavaty, learned advocate appeared for Bhavnagar Municipal Corporation and submitted that initially, there were some disputes between the State Government and the Bhavnagar Municipal Corporation with regard to the possession of the Mills Company. However, it is their inter-se dispute and the same can be resolved by them, but in no case, it would affect the claim made by the State Government before this Court to hand over the possession of the properties to the State Government and the Official Liquidator has no right to retain the said possession.

31.Mr. A.L. Shah, learned advocate appeared for the Official Liquidator and he has also submitted after due deliberation and discussion

with the Official Liquidator that since the State Government has discharged the liabilities of the Mills Company towards Secured Creditors and labourers and there is still surplus fund available with the Official Liquidator in the account of GSTC and since the State Government has undertaken to discharge the liability, if any, which may arise in future, the Official Liquidator has no objection in handing over the possession of the properties in question to the State Government.

32.In the above view of the matter and looking to the entire facts and circumstances of the case and considering the various contentions raised from time to time and the reports submitted including the report of the Chartered Accountant, the Court hereby directs the Official Liquidator to hand over the possession of the properties in question of the New Jahangir Vakil Mills (in liquidation) to the

State Government as the State Government is the only Secured Creditor and sole shareholder of the Company in liquidation. The State Government is, however, directed to file an undertaking before this Court through a responsible Officer to discharge the liabilities, if any that may arise in future as stated in the affidavit filed in support of the Judges Summons taken out in Company Application No. 237 of 2004.

33.So far as surplus funds available with the Official Liquidator in GSTC's account is concerned, the Official Liquidator is hereby directed to render the accounts of the funds available with him till this date. As per the say of the State Government, the Official Liquidator is having the fund of more than Rs. 45 Crores in GSTC's account. The part of the said fund may be retained by him for discharging the liability or to meet with any

contingency that may arise in future. However, the balance amount will have to be handed over to the State Government and the appropriate order in this regard would be passed on submission of the accounts before the Court.

34.Since the Court has taken the decision to hand over the possession of the immovable properties of NJVM an unit of GSTC, the Company in liquidation to the State Government, the question of confirmation of sale in favour of 21st Century Developers – the applicant in Company Application No. 16 of 2000, acceptance of offer for purchase of all assets including land, building etc. made by Mr. Rajabbhai K. Kangadh – the applicant in Company Application No. 26/2000 which is already stated to have been disposed off, confirmation of sale of the entire property of the Mills Company in favour of M/s. Vicky Trading – the applicant in Company Application No. 19 of 2003 and setting

aside the action of initiating the auction of the land occupied by the Mills Company as prayed for by Shri Satishbhai Chavda – the applicant in Company Application No. 257 of 2000 does not arise and accordingly, all these four applications have become infructuous and are disposed of as having become infructuous.

35.It is stated in the affidavit filed on behalf of the State Government in Company Application No. 237 of 2004 that the dues of State Bank of Saurashtra, being the Secured creditor of the Company, have been paid off and in this view of the matter, the prayer made by the State Bank of Saurashtra – the applicant in Company Application No. 43 of 2000 does not survive and hence, it is accordingly disposed of as having become infructuous.

36.As far as two Company Applications being Company Application Nos. 44 & 186 of 2000 moved

by Bhavnagar Municipal Corporation are concerned, since the submissions have been made that there are inter-se disputes and the same would be resolved amicably, the Court has not gone into the merits of these two applications and accordingly these two applications stand disposed of.

37.As far as O.L.R. No. 3 of 2000 is concerned, since the sale of plant, machinery, furniture / fixtures, office equipments, spares, scrap and misc. items of the Mills Company has been confirmed by this Court in favour of M/s. I.B. Enterprise, nominee of M/s. Vicky Trading and immovable property of the Company is decided to be handed over to the State Government, O.L.R. No. 3 of 2000 does not survive and it is accordingly disposed of.

38.As far as O.L.R. No. 23 of 2004 is concerned, this Court has passed two orders earlier on

05.05.2004 and 20.07.2004. Pursuant to the order passed by this Court on 20.07.2004, the Official Liquidator has filed further report on 09.08.2004 seeking direction from this Court as to whether he should accept the claim of Rs. 1,48,307/- against the total loss and/or damages of Rs. 98,57,500/- assessed by the Executive Engineer, GIDC, Bhavnagar. The Official Liquidator has further sought for the direction to GITCO to assess damages to the building structure and compound wall caused by the purchaser. The Official Liquidator has stated in his report that Oriental Insurance Company has intimated vide letter dated 23.07.2004 that the claim of loss and damages has been assessed at Rs. 1,48,307/- as against the total sum insured of Rs. 10 Lacs. Since the immovable property is ordered to be handed over to the State Government, it is now incumbent upon the State Government to take appropriate action in this regard and to pursue

the matter with Oriental Insurance Company with regard to the claim for loss and damages and also to take appropriate action against the purchaser for recovery of the loss and/or damages caused to the building structure as well as compound wall. The Official Liquidator shall render all necessary assistance to the State Government in this regard. With this direction, O.L.R. No. 23 of 2004 is accordingly disposed of.

39.As far as O.L.R. No. 72 of 2005 is concerned, in view of the decision taken by this Court in Company Application No. 237 of 2004 and in view of the fact that O.L.R. No. 23 of 2004 along with Company Application No. 19 of 2003 are being disposed of today, the directions sought for in the present report no longer survives and it is accordingly disposed of.

40.So far as Company Application No. 268 of 2004

is concerned, an affidavit-in-reply is filed by the Deputy Official Liquidator wherein it is stated that the order passed by the Industrial Tribunal, Bhavnagar in Review Application i.e. Reference (IT) No. 19 of 1995 on the basis of which the claim is made in the present Company Application, has been the subject matter of Special Civil Application No. 826 of 1997 which is pending before this Court. It is further stated that before the winding up order was passed by this Court in the case of GSTC, GSTC introduced voluntary retirement scheme for the workers of all the Mills Company of GSTC with the financial help of the State Government and in that case, all the 97 workers who were left out, accepted the offer made by the Corporation and voluntarily resigned and accepted the financial benefits which were given under the Scheme. When they have accepted the voluntary retirement scheme without any reservation and once they have admitted that they were no

longer employees of the Corporation, they could not work for the Company. It is further stated in the said affidavit-in-reply that the Union has claimed the wages for the period from 01.10.1994 to 30.09.1996 during which time they have not rendered their services to the Company and, therefore, the principle of “no work no pay” would be applicable to them. The Mill Company has not taken work from these 97 workers who were the workers of the loom shed department of the Mill Company and since May 1994, the loom shed department was closed. It was done after taking the respective Union in confidence and, therefore, the question of non-acceptance of retrenchment compensation by 97 workers did not arise. It is further stated that at this juncture, when the Mill Company is not in existence and the Corporation who took over the management of the Mill Company is also not in existence, these 97 workers cannot claim salary for the period for which they have never

worked.

41.In any case, the petition is still pending before this Court and hence, it is not necessary to pass any order in this application. It is open for the applicant – Union to move this Court after the aforesaid Special Civil Application No. 826 of 1997 is decided. Even otherwise, the State Government has undertaken the liability that if any claim on account of workers' dues arises, the same will be discharged by the State Government. In view of the aforesaid position, this application does not survive at this stage and it is accordingly disposed of.

42.In the above view of the matter, all the aforesaid applications and O.L. Reports are accordingly disposed off without any order as to costs.

[K.A. PUJ, J.]

S*avariya*